

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of

Petition for Arbitration of an Interconnection
Agreement Between Charter Fiberlink MA-
CCO, LLC, and Verizon-Massachusetts Inc.

Docket No. 06-56

RESPONSE OF VERIZON MASSACHUSETTS

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Introduction and Summary

Charter's Petition for Arbitration¹ asks the Department to arbitrate several unresolved issues purportedly arising from the parties' attempt to negotiate an amendment to their interconnection agreement to allow interconnection through fiber meet arrangements. Charter's list of "open" issues, however, is not accurate. Rather, Charter has reneged on the agreements reached during negotiations in order to create "open" issues for purposes of its arbitration petition. Charter's petition also raises issues that were never discussed during the parties' negotiations. In fact, Charter has included an entirely new draft of contract language with its petition that was never shared with Verizon during the negotiations. And some of the new draft contract language Charter provided with its petition does not relate to any of the issues listed in Charter's petition.

¹ Petition of Charter Fiberlink MA-COO, LLC for Arbitration of an Amendment to the Interconnection Agreement Between Verizon-Massachusetts Inc. and Charter Fiberlink MA-CCO, LLC Pursuant to Section 252 of the Communications Act of 1934, as Amended filed June 22, 2006 ("Charter Petition").

Charter's petition reflects a gross violation of the negotiation and arbitration process established in the Telecommunications Act of 1996 ("Act"). Arbitration is only available to resolve issues that remain open after the parties' have negotiated in good faith. It is not a process by which a carrier can reopen issues that were settled during the negotiations or raise new issues that were never negotiated. Yet that is precisely what Charter is attempting to do through its arbitration petition. The "open" issues listed in Charter's petition are not subject to arbitration because there were either closed during the negotiations or never raised during the negotiations. The Department should therefore dismiss Charter's arbitration petition, as Verizon MA has requested in a separate motion to dismiss filed today. In the alternative, the Department should order the parties to execute Verizon's final proposed fiber meet amendment (Exhibit 2).

I. History of Negotiations.

Verizon has been negotiating fiber meet amendments for a number of states with Charter since at least the middle of last year. In June 2005, Verizon provided to Charter's counsel, Leslie Genova, a draft fiber meet amendment for South Carolina. Nearly six weeks later, Verizon received a voice message from Ms. Genova indicating that Charter would not sign a fiber meet amendment and that Charter intended to operate under the terms of its interconnection agreement.

In August 2005, Ms. Genova restarted negotiations for a fiber meet amendment with Verizon. She proposed language changes for Section 2.2 regarding distance limitations on new fiber construction. At that time, she did not raise any objections to the language in Section 2.1, including the DS3 traffic level threshold. In September 2005,

Verizon provided a counterproposal to Charter that addressed Ms. Genova's proposed changes on the distance limitations.

In October 2005, Ms. Genova first proposed that Verizon agree to build a fiber meet arrangement based solely on Charter's forecast that traffic volumes would reach the DS3 level within 12 months. She also indicated that negotiations were for all states where the parties are interconnected and that Charter wanted to execute amendments quickly in Massachusetts and California.

In November 2005, Ms. Carrie Cox replaced Ms. Genova as Charter's negotiator. The following month, Mr. K.C. Halm began assisting Ms. Cox in these negotiations. At their request, Verizon provided, in December 2005, a counterproposal that would allow Charter to request a fiber meet arrangement based on Charter's good faith forecast showing at least one DS3's worth of traffic volume within 12 months. Under Verizon's counterproposal, Charter would provide an assurance of payment to cover Verizon's cost of the fiber meet arrangement in the event traffic volumes did not reach the DS3 level within 12 months.

For the next several months, Verizon and Charter held conference calls and exchanged drafts of the fiber meet amendment. Verizon received Charter's final proposed fiber meet amendment on March 16, 2006. *See* Exhibit 1 (March 16, 2006 email from Mr. K.C. Halm plus two attachments). Charter's proposed changes are shown in blue and changes previously proposed by Verizon are shown in red. In the email accompanying Charter's final proposed amendment, Charter's negotiator indicated that "[y]ou can see *all* of our [Charter's] changes in the format originally provided by Verizon in the second document labeled 'Charter-Fiber Mt Amdt-Draft 031606.'" *Id.* (emphasis

supplied). Only Section 2.1 of Charter's final proposed amendment contained any changed or modified contract language. All other sections of Charter's final proposed amendment were unchanged and therefore reflected Charter's agreement on the contract language in those sections.

Verizon sent Charter its final proposed fiber meet amendment on May 8, 2006. *See* Exhibit 2 (May 8, 2006 email from Mr. James Pachulski plus one attachment). Verizon's proposed changes to the contract language of the amendment are shown in red. Verizon's final proposed amendment showed changes to the language in Section 2.1, plus a cross-reference to Section 2.1 in Section 2.2 and a minor wording change in Section 2.4. The other sections of Verizon's final proposed amendment were unchanged and reflected the parties' agreement on the language in those sections.

In Exhibit B of its arbitration petition, Charter included a new proposed fiber meet amendment that Charter never provided to Verizon during the parties' negotiations. *See* Charter Petition, Exhibit B. Charter's new proposed amendment is substantially different from the final proposed amendment Charter provided to Verizon during negotiations. For example, while Charter's final proposed amendment in negotiations only had changes to contract language in Section 2.1, Charter's new proposed amendment has changes in many other sections, including the last "Whereas" clause, the heading of Section 2, Section 2.2, Section 2.3, Section 2.4, as well as Sections 2.1, 4, 4.1, 4.2, 4.3, 6.3, and 7.4 of Exhibit A of the amendment. *Compare* Exhibit 1 attached hereto with Exhibit B of Charter's Petition.

Moreover, Section 2.1 of Charter's new proposed fiber meet amendment is vastly different from Section 2.1 of the final proposed amendment Charter provided to Verizon

during negotiations. In Section 2.1 of its new proposed fiber meet amendment, Charter has stricken all but a few words of the language it had proposed in Section 2.1 of its final proposed amendment provided to Verizon during negotiations. In its place, Charter has proposed six and a half paragraphs of new contract language that was never provided to Verizon during negotiations. *Compare* Exhibit 1 attached hereto with Exhibit B of Charter's Petition.

II. Charter Erroneously Lists as "Unresolved" Issues the Parties Settled and Issues Charter Never Raised in Negotiations.

Each of the issues that Charter asserts are "unresolved" were actually closed by the parties during negotiations or were never raised by Charter during the negotiations. Charter is now trying to reopen closed issues and create new issues by filing its arbitration petition. The Act does not allow Charter to do so. Charter has a duty to negotiate in good faith and can only petition for arbitration of issues that remain open after the Act's specified negotiation period of at least 135 days. *See* 47 U.S.C. § 252(b)(1). Where Charter's final proposed amendment during negotiations contains the same language as Verizon MA's final proposed amendment during negotiations, there is no open issue to be arbitrated.

Charter's Issue 1: Conditioning Charter's Right to Request a Fiber Meet Arrangement on a Minimum Level of Traffic

Verizon MA's Response: During negotiations, the parties reached agreement on the minimum traffic thresholds that would warrant the deployment of a fiber meet arrangement. These minimum traffic thresholds and related terms were reflected in both Charter's and Verizon MA's final proposed amendments. Charter is now impermissibly

walking away from the agreements it reached during negotiations and requesting arbitration of these closed issues.

First, Charter agreed that either party could request a fiber meet arrangement where Charter and Verizon MA were already exchanging a DS3's worth of traffic. In Section 2.1.1 of its final proposed amendment, Charter included the following language:

Each Party may request a Fiber Meet arrangement by providing written notice thereof to the other Party if the Parties have consistently been exchanging applicable traffic (as set forth in Section 2.3 below) in the relevant exchange(s) in an amount equal to a utilization level of at least one (1) DS3.

See Exhibit 1, Section 2.1.1. This same language was included as Section 2.1.1 of Verizon MA's final proposed amendment, except the reference to Section 2.3 was changed to Section 2.4. *See* Exhibit 2, Section 2.1.1.

Second, Charter agreed that it could request a fiber meet arrangement where Charter and Verizon MA were exchanging nearly a DS3's worth of traffic and traffic volumes were continuing to grow. In Section 2.1.2 of its final proposed amendment, Charter included the following language:

[Charter] may request a Fiber Meet arrangement by providing written notice thereof to Verizon if (a) in the preceding month the Parties exchanged applicable traffic in the relevant exchange(s) in an amount equal to a DS3 utilization level of at least seventy percent (70%) of one (1) DS3 (for the avoidance of doubt, a seventy percent (70%) DS3 utilization level occurs where twenty (20) DS1s on a single DS3 are activated to exchange traffic); (b) the amount of such traffic exchanged during the preceding three month period increased by at least eight percent (8%); and (c) [Charter] has submitted a good faith, written forecast to Verizon showing that the Parties will consistently exchange an amount of applicable traffic equal to a utilization level of at least one (1) DS3 within the next twelve (12) months.

See Exhibit 1, Section 2.1.2. Verizon MA included substantially the same language in Section 2.1.2 of Verizon MA's final proposed amendment, except that Verizon MA proposed a different method of determining whether the utilization level had reached 70 percent:

[Charter] may request a Fiber Meet arrangement by providing written notice thereof to Verizon if (a) in the preceding month the Parties exchanged applicable traffic in the relevant exchange(s) in an amount equal to a utilization level of at least seventy percent (70%) of one (1) DS3; (b) the amount of such traffic exchanged during the preceding three month period increased by at least eight percent (8%); and (c) [Charter] has submitted a good faith, written forecast to Verizon showing that the Parties will consistently exchange an amount of applicable traffic equal to a utilization level of at least one (1) DS3 within the next twelve (12) months. Requirement (a) in this Section 2.1.2 will be deemed satisfied where the Parties have activated at least 20 DS1s on a DS3 used to exchange applicable traffic and the amount of applicable traffic exchanged on such activated DS1s (excluding those DS1s used solely and exclusively for intraLATA toll traffic originated by Verizon's Customers, 911 traffic, Operator Services/Directory Assistance traffic or Exchange Access traffic between [Charter]'s Telephone Exchange Service Customers and purchasers of Switched Exchange Access Service via a Verizon access Tandem) was, on average, at least 200,000 minutes of use per DS1 for the relevant month or at least 600 busy hour Centium Call Seconds (BHCCS) of use per DS1 for the relevant month.

See Exhibit 2, Section 2.1.2.

Third, Charter agreed that it could request a fiber meet arrangement where the parties are not already exchanging traffic in a LATA and Verizon MA does not have interconnection facilities available to Charter's location. In Section 2.1.3 of its final proposed amendment, Charter included the following language:

[Charter] may request a Fiber Meet arrangement by providing written notice thereof to Verizon if (a) the Parties are not already exchanging traffic in the LATA; (b)

[Charter] has ordered DS3 facilities from Verizon for exchanging applicable traffic in the relevant exchange(s); (c) Verizon has responded to such order by indicating that the requested facilities are not available; and (d) [Charter] has submitted a good faith, written forecast to Verizon showing that the Parties will consistently exchange an amount of applicable traffic equal to a utilization level of at least one (1) DS3 within the next twelve (12) months.

See Exhibit 1, Section 2.1.3. Verizon MA included the same language in Section 2.1.3 of Verizon MA's final proposed amendment. *See* Exhibit 2, Section 2.1.3.²

Even if Charter had not already agreed on the minimum traffic volumes for a fiber meet arrangement, there are sound reasons for requiring such minimums in any fiber meet amendment to the parties' interconnection agreement. The smallest fiber optic system that could be deployed in a fiber meet arrangement is an OC3 system. An OC3 fiber optic system has the capacity to handle approximately three DS3's worth of traffic volume, or approximately 16,800,000 minutes of use per month. From a network engineering perspective, it is not efficient to use an OC3 fiber optic system for less than a DS3's worth of traffic volume (*i.e.*, one-third of the capacity of the OC3 system). In Verizon MA's own network planning, Verizon MA does not consider deploying an OC3 system until it has at least one DS3's worth of traffic volume.

It would not be an efficient use of network resources to deploy an OC3 fiber optic system in a fiber meet arrangement where the traffic volumes are below a DS3 level. Therefore, consistent with sound network engineering principles and Verizon MA's own network planning, the parties should not deploy a fiber meet arrangement until they are

² It should be noted that this language is not relevant for Massachusetts because it only applies in a LATA where the parties are NOT exchanging traffic. Charter and Verizon are exchanging traffic in both LATAs in Massachusetts. This language would only be applicable in other states that were part of the parties' multistate negotiations for a fiber meet amendment.

already exchanging at least one DS3's worth of traffic. However, in an effort to reach an accommodation with Charter, Verizon MA would be willing to deploy a fiber meet arrangement where the parties are already exchanging at least 70 percent of a DS3's worth of traffic and those traffic volumes have grown at least 8 percent in the preceding three months. In this latter situation, Verizon MA expects that the parties will be able to complete construction of a fiber meet arrangement by the time the parties are exchanging a DS3's worth of traffic.

These minimum traffic thresholds should not significantly delay Charter's ability to request fiber meet arrangements in Massachusetts. Verizon MA and Charter have already interconnected their networks in LATAs 126 and 128 and are exchanging traffic. In LATA 128, Verizon MA and Charter are already exchanging at least a DS3's worth of traffic. Under Verizon MA's final proposed amendment, Charter would be able to request a fiber meet arrangement right now. In LATA 126, Verizon MA and Charter are not yet exchanging a DS3's worth of traffic, but Charter has indicated during negotiations that it expects traffic volumes to grow rapidly. As soon as Charter and Verizon MA begin exchanging at least 70 percent of a DS3's worth of traffic in LATA 126 (and meet the 8 percent growth rate factor), Charter would be able to request a fiber meet arrangement under Verizon MA's final proposed amendment.

For these reasons, the Department should order that Verizon MA's proposed language on minimum traffic volumes be included in the parties' fiber meet amendment. See Exhibit 2, Section 2.1.

Charter's Issue 2: Allocation of Cost of Fiber Meet Arrangements

Verizon MA's Response: During negotiations, the parties had not only reached agreement on minimum traffic thresholds, they also reached agreement on the financial assurances to be provided by Charter in the event the traffic exchanged did not reach the agreed-upon minimum thresholds. These financial assurances were reflected in both Charter's and Verizon MA's final proposed amendments. Here again, Charter is impermissibly disregarding those agreements and requesting arbitration of closed issues.

First, Charter agreed that the parties' fiber meet amendment should contain financial assurances in the event the volume of traffic exchanged does not reach a DS3 level. In Section 2.1.4 of its final proposed amendment, Charter included the following provision:

If the Parties establish a Fiber Meet arrangement at [Charter]'s request, then, the Parties agree that the following provisions will govern the recovery of costs if the traffic exchanged over the Fiber Meet arrangement does not reach or exceed a DS3.

See Exhibit 1, Section 2.1.4.

Second, Charter agreed on the manner in which those financial assurances should be calculated. In Section 2.1.4(a) of its final proposed amendment, Charter included the following provision:

If [Charter] requests a Fiber Meet arrangement pursuant to Section 2.1.2 (above) and if after traffic is established over the Fiber Meet arrangement the Parties do not exchange applicable traffic in an amount equal to a utilization level of at least one (1) DS3 then Verizon may bill (and [Charter] shall pay) Verizon's short-term (month to month) Tariff rates for a DS3 Channel Termination, a DS3/DS1 Multiplexer and, if applicable, mileage between Verizon wire centers for any subsequent month where the Parties do not exchange applicable traffic in an amount equal to a utilization level of at least one (1) DS3.

See Exhibit 1, Section 2.1.4(a). Charter proposed a similar provision in Section 2.1.4(b).

If [Charter] requests a Fiber Meet arrangement pursuant to Section 2.1.3 (above), then if beginning twelve months after the Fiber Meet arrangement is completed and accepted the Parties do not exchange applicable traffic in an amount equal to a utilization level of at least one (1) DS3, Verizon may bill (and [Charter] shall pay) Verizon's short-term (month to month) Tariff rates for a DS3 Channel Termination, a DS3/DS1 Multiplexer and, if applicable, mileage between Verizon wire centers for any subsequent month where the Parties do not exchange applicable traffic in an amount equal to a utilization level of at least one (1) DS3.

See Exhibit 1, Section 2.1.4(b).

Verizon MA proposed essentially the same language to Charter regarding financial assurances. In Section 2.1.2 of its final proposed amendment, Verizon MA proposed the following provision (which corresponds to Charter's proposed Section 2.1.4(a)).

If the Parties establish a Fiber Meet arrangement under this Section 2.1.2, then, for any month (except for the first month after the establishment of such Fiber Meet arrangement) that Verizon determines that the Parties did not exchange applicable traffic over such Fiber Meet arrangement in an amount equal to a utilization level of at least one (1) DS3, Verizon may bill (and [Charter] shall pay) Verizon's short-term (month to month) Tariff rates for a DS3 Channel Termination, a DS3/DS1 Multiplexer and, if applicable, mileage between Verizon wire centers.

See Exhibit 2, Section 2.1.2.

In Section 2.1.3 of its final proposed amendment, Verizon MA proposed the following provision (which corresponds to Charter's proposed Section 2.1.4(b)).

If the Parties establish a Fiber Meet arrangement under this Section 2.1.3, then, for any month (except for the first twelve (12) months after the establishment of such Fiber Meet arrangement) that Verizon determines that the Parties did not exchange applicable traffic over such Fiber

Meet arrangement in an amount equal to a utilization level of at least one (1) DS3, Verizon may bill (and [Charter] shall pay) Verizon's short-term (month to month) Tariff rates for a DS3 Channel Termination, a DS3/DS1 Multiplexer and, if applicable, mileage between Verizon wire centers.

See Exhibit 2, Section 2.1.3.

The minor differences between Charter's proposed language in Sections 2.1.4(a) and 2.1.4(b) and Verizon MA's proposed language in Sections 2.1.2 and 2.1.3 pertain primarily to the different organizational structure of Charter's and Verizon MA's final proposed amendments. Otherwise, both parties' financial assurance proposals are the same. Both Charter and Verizon MA agreed during negotiations that if the Parties fail to "exchange applicable traffic in an amount equal to a utilization level of at least one (1) DS3," then "Verizon may bill (and [Charter] shall pay) Verizon's short-term (month to month) Tariff rates for a DS3 Channel Termination, a DS3/DS1 Multiplexer and, if applicable, mileage between Verizon wire centers."

Even if Charter had not already agreed on the financial assurances that it would provide to Verizon MA if the minimum traffic volumes are not met, there are sound reasons for requiring such financial assurances in any fiber meet amendment to the parties' interconnection agreement. When Verizon incurs the cost of a fiber meet arrangement at Charter's request, it has no control of the traffic volumes to be exchanged over that arrangement. Only Charter can control those traffic volumes and assure the efficient utilization of the OC3 system in that fiber meet arrangement.

As previously explained, the smallest fiber optic system that could be deployed in a fiber meet arrangement is an OC3 system. An OC3 system can handle three DS3's

worth of traffic. The cost of deploying an OC3 system in such a fiber meet arrangement could run as much as \$60,000-90,000.³

Consistent with sound network engineering principles and Verizon MA's own network planning, Verizon MA has proposed to Charter that the parties could deploy a fiber meet arrangement where they are already exchanging at least one DS3's worth of traffic. In this situation, neither party would charge the other party for use of the fiber meet arrangement to exchange reciprocal compensation traffic or IntraLATA toll traffic between their respective customers. Each party would charge the other party reciprocal compensation or access charges, as applicable, for transporting and terminating such traffic.

If Verizon and Charter deploy a fiber meet arrangement in anticipation of exchanging at least a DS3's worth of traffic and such traffic volumes do not materialize, Charter should provide some financial assurance to Verizon MA. That is because Charter, not Verizon MA, controls traffic volumes. If Verizon MA and Charter were to deploy an OC3 system for a fiber meet arrangement, Charter would be in complete control of the traffic volumes exchanged over that arrangement. The timing and success of Charter's marketing efforts would determine the traffic volumes exchanged over the fiber meet arrangement. If Charter's marketing efforts were delayed or not successful, there might be no traffic exchanged over the fiber meet arrangement or the traffic

³ In order to deploy an OC3 fiber optic system in a fiber meet arrangement with Charter, Verizon MA must purchase OC3 equipment and install that equipment in one of its central offices. Verizon MA must then connect that equipment to spare fiber facilities that extend to or near the agreed-upon fiber meet point(s). Verizon MA then needs to purchase a fiber network interface device ("FNID") and install it at one of the meet points. If Verizon MA's spare fiber already extends to the meet point(s), Verizon MA will connect it to Verizon MA's side of the FNID(s). If Verizon MA's spare fiber does not extend to the meet point(s), Verizon MA will need to run additional fiber to connect its existing spare fiber facilities to the FNID(s).

volumes might be only a fraction of a DS3 level. In this situation, an OC3 fiber optic system would be an inefficient method of exchanging traffic. It would be like using a fire hose to water house plants.

If Verizon MA were to deploy a fiber optic system in a fiber meet arrangement with Charter, those facilities would be dedicated to Charter's traffic. Verizon MA could not use those facilities to serve another customer or carrier. If Charter did not rapidly and successfully market its services, there would be little or no traffic carried over those facilities. In this situation, traffic volumes would not produce sufficient revenues to warrant the cost of the fiber meet facilities. Nor would those facilities be used to complete calls from Verizon MA's customers to Charter's customers if Charter has no customers.

For these reasons, the Department should order that Verizon MA's proposed language on financial assurance be included in the parties' fiber meet amendment. *See* Exhibit 2, Section 2.1.

Charter's Issue 3: Distance Limitations on Proposed Fiber Meet Arrangements; and Limitations of Fiber Strands Deployed by Verizon MA

Verizon MA's Response: During negotiations, the parties reached agreement on distance limitations for the use of Verizon MA's spare fiber optic cables and the construction of new Verizon MA fiber optic cables. These distance limitations were reflected in both Charter's and Verizon MA's final proposed amendments. Charter is again impermissibly walking away from the agreements it reached during negotiations and requesting arbitration of issues that are closed.

Charter agreed that, in general, fiber meet points will be located within three miles from a Verizon MA wire center and that Verizon MA will not be required to

construct or deploy more than 500 feet of new fiber optic cable to reach a fiber meet point. In Section 2.2 of its final proposed amendment, Charter included the following language:

The Parties agree that, except as otherwise agreed by the Parties (e.g., in a highly unusual circumstance that might require a different standard), Fiber Meet points established between the Parties shall extend no further than three (3) miles from an applicable Verizon Wire Center and Verizon shall not be required to construct or deploy more than five hundred (500) feet of fiber cable for each Fiber Meet arrangement between the Parties. If the Parties cannot reach agreement on the location of a Fiber Meet Point for a Fiber Meet arrangement, either Party may pursue the dispute resolution process set forth in the Agreement.

See Exhibit 1, Section 2.2. This same language was included as Section 2.3 of Verizon MA's final proposed amendment. See Exhibit 2, Section 2.3.

Even if Charter had not agreed to these limitations, there are sound reasons to include them in the parties' fiber meet amendment. Incumbent carriers are not required to construct whatever length of fiber optic cable it takes for a fiber meet arrangement requested by a competitor. Rather, the Federal Communications Commission ("FCC") has made clear that incumbent carriers need only make a "reasonable accommodation" for interconnection through a fiber meet arrangement.

As a preliminary matter, the FCC's rules call for interconnection to occur "[a]t any technically feasible point within the incumbent LEC's network." 47 C.F.R. § 51.305. In the *Local Competition Order*, the FCC said that "[i]n a meet point arrangement, the 'point' of interconnection for purposes of sections 251(c)(2) and 251(c)(3) remains on

‘the local exchange carrier’s network.’”⁴ However, the FCC clarified that “the creation of meet point arrangements may require *some* build out of facilities by the incumbent LEC” and that “the *limited* build-out of facilities from that point may then constitute an accommodation of interconnection.” *Id.* (emphasis supplied.) In this context, the FCC indicated that “the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection.” *Id.*

Not only is Verizon MA entitled to have distance limitations in the parties’ fiber meet amendment, the distance limitations proposed by Verizon MA are entirely reasonable. First, Charter only needs to establish two fiber meet arrangements in Massachusetts, one in each of the two Massachusetts LATAs. In each of these LATAs, Charter is already located within three (3) miles of Verizon MA’s nearest wire center.

In LATA 126, Charter’s location (CHCPMAFD) is 354 Sheridan Street in Chicopee. Verizon MA’s nearest wire center (CHCPMARI) is located at 29 Riverview Terrace in Chicopee. The distance between these two locations, measured on an airline mileage basis using their associated V&H coordinates, is only 1.9 miles. Charter’s location is therefore already within 3 miles of Verizon MA’s wire center.

In LATA 128, Charter’s location (OXFRMAAK) is 199 Southbridge Street in Oxford. Verizon MA’s nearest wire center (AUBNMALG) is located at Leicester & Garden Streets in Auburn. The distance between these two locations, measured on an

⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 ¶553 (1996) (*Local Competition Order*) (subsequent history omitted).

airline mileage basis using their associated V&H coordinates, is only 2.6 miles. Again, Charter's location is already within 3 miles of Verizon MA's wire center.

Second, the three mile limitation from each Verizon MA wire center comprises an area of 28.2 square miles. Verizon MA has 268 wire centers in Massachusetts. If Verizon MA's wire centers are at least 6 miles apart, there would be approximately 7,600 square miles that are located within Verizon MA's proposed distance limitation. For purposes of comparison, the entire Commonwealth of Massachusetts covers approximately 10,500 square miles. Verizon MA's proposed distance limitation allows Charter ample opportunity to establish fiber meet points within reasonable distances from Verizon MA's nearest wire centers.

Third, Verizon MA's proposed distance limitations are not absolute. The language proposed by Verizon MA allows the parties to agree to exceed those limitations in extraordinary circumstances. And if the parties are not able to agree on the location for fiber meet points, either party can invoke the agreement's dispute resolution provisions.

For these reasons, the Department should order that Verizon MA's proposed language on distance limitations be included in the parties' fiber meet amendment. *See* Exhibit 2, Section 2.3.

Charter's Issue 4: Limitations on the Type of Traffic to be Exchanged Over a Fiber Meet Arrangement

Verizon MA's Response: During negotiations, the parties reached agreement on the types of traffic that the parties could exchange over a fiber meet arrangement as well as the charges that would apply where Charter uses a fiber meet arrangement for other purposes. These traffic types and compensation provisions were reflected in both

Charter's and Verizon MA's final proposed amendments. Charter is again impermissibly ignoring the agreements it reached during negotiations and asking the Department to arbitrate closed issues.

Charter agreed on the types of traffic to be exchanged over fiber meet arrangements, which includes reciprocal compensation traffic and IntraLATA toll traffic between Charter's and Verizon MA's customers, as well as tandem transit traffic and Internet traffic. Charter also agreed on the charges that would apply when Charter used a fiber meet arrangement for other purposes, such as sending its 911 calls to a Public Service Answering Point. In Section 2.3 of its final proposed amendment, Charter included the following language:

Except as otherwise agreed by the Parties, any Fiber Meet arrangements established under this Amendment shall be used only for the transmission and routing of Reciprocal Compensation Traffic **[MAY NEED TO DEFINE THIS AND OTHER TERMS IF NOT DEFINED IN UNDERLYING AGREEMENT]**, translated LEC IntraLATA toll free service access code (*e.g.*, 800/888/877) traffic, and IntraLATA Toll Traffic, in each case between their respective Telephone Exchange Service Customers, as well as Tandem Transit Traffic, and Measured Internet Traffic, all in accordance with the Agreement. Operator Services/Directory Assistance traffic, 911 traffic, and Exchange Access traffic, including translated InterLATA toll free service access code (*e.g.*, 800/888/877) traffic, between [Charter] Telephone Exchange Service Customers and purchasers of Switched Exchange Service via a Verizon access Tandem, may be exchanged over Fiber Meet arrangements subject to applicable Verizon Tariff rates and charges. Except as otherwise agreed in writing by the Parties, point-to-point (*i.e.*, unswitched) access services and unbundled network elements shall not be provisioned on or accessed through Fiber Meet arrangements. Notwithstanding any other provision of the Agreement (including, without limitation, this Amendment) or otherwise, other than the obligation to pay any applicable intercarrier compensation charges pursuant to the terms of

the Agreement (as well as the obligation to pay Verizon's Tariff rates and charges for the traffic types addressed earlier in this Section 2.3), neither Party shall have any obligation to pay the other Party any charges in connection with any Fiber Meet arrangements established under this Amendment.

See Exhibit 1, Section 2.3. This same language was included as Section 2.4 of Verizon MA's final proposed amendment, except for an additional reference to a letter of credit or cash deposit. *See* Exhibit 2, Section 2.4.

Even if Charter had not agreed on these traffic types and compensation provisions, they should nonetheless be included in the parties' fiber meet amendment. As a preliminary matter, Verizon MA's proposal expands, rather than limits, the types of traffic that can be exchanged over a fiber meet arrangement. The parties' current interconnection agreement states that "[e]xcept as otherwise agreed by the Parties, Fiber Meet arrangements shall be used only for the termination of Reciprocal Compensation Traffic, Measured Internet Traffic, and IntraLATA Toll Traffic." *See* Interconnection Agreement adopted by Charter on February 27, 2004, Interconnection Attachment, Section 3.3. Verizon MA's proposal expands this list to permit tandem transit traffic over fiber meet arrangements.

In addition, the parties' fiber meet amendment should identify the traffic that the parties have agreed to exchange over fiber meet arrangements. If Charter wishes to exchange other types of traffic not listed in Verizon MA's proposal, it should identify those traffic types so that Verizon MA can evaluate the feasibility of exchanging such traffic over a fiber meet arrangement. Charter should not have the ability to send traffic types over a fiber meet arrangement without Verizon MA's knowledge.

Where Charter does not exchange traffic with Verizon MA, but rather uses a fiber meet arrangement to access a service platform, such as 911, Verizon MA is entitled to charge Charter for its use of the fiber meet arrangement. The FCC explained that competitors should pay the full cost of a fiber meet arrangement when they use it to access unbundled network elements:

We believe that, although the Commission has authority to require incumbent LECs to provide meet point arrangements upon request, such an arrangement only makes sense for interconnection pursuant to section 251(c)(2) but not for unbundled access under section 251(c)(3). . . . In an access arrangement pursuant to section 251(c)(3), however, the interconnection point will be a part of the new entrant's network and will be used to carry traffic from one element in the new entrant's network to another. We conclude that in a section 251(c)(3) access situation, the new entrant should pay all of the economic costs of a meet point arrangement.

See Local Competition Order ¶ 553. This same reasoning applies where Charter is using a fiber meet arrangement to access a service platform, such as 911, operator services, directory assistance, or an interexchange carrier's point of presence. There is no reason for Verizon MA to bear the cost of fiber meet facilities used by Charter to access service platforms. In these situations, as with obtaining access to unbundled network elements, Charter should bear the full cost of the fiber meet facilities used by Charter to access these service platforms.

For these reasons, the Department should order that Verizon MA's proposed language on traffic types and compensation be included in the parties' fiber meet amendment. *See Exhibit 2, Section 2.4.*

Charter's Issue 5: Miscellaneous Technical Issues

Verizon MA's Response: During negotiations, the parties reached agreement on distance limitations for the use of Verizon MA's spare fiber optic cables and the use of add/drop multiplexers. The parties' agreement on these technical issues was reflected in both Charter's and Verizon MA's final proposed amendments. Charter is again impermissibly abandoning the agreements it reached during negotiations and asking the Department to arbitrate closed issues.

Charter agreed that, in general, fiber meet points will be located within three (3) miles from a Verizon MA wire center. In Section 2.1 of Exhibit A of its final proposed amendment, Charter included the following language:

FM No. [XX] will be configured as shown on Appendix A. FM No. [XX] will have two FMPs. Neither FMP is more than three (3) miles from the nearest Verizon Wire Center.

See Exhibit 1, Section 2.1 of Exhibit A. This same language was included as Section 2.1 of Exhibit A of Verizon MA's final proposed amendment. *See* Exhibit 2, Section 2.1 of Exhibit A.

Charter also agreed to the use of add/drop multiplexers on fiber meet arrangements. In Section 4 of Exhibit A of its final proposed amendment, Charter included the following language:

4. Add Drop Multiplexer.

4.1 Verizon will, at its own cost, obtain and install (at its own premise) its own Add Drop Multiplexer. Verizon will use a [MANUFACTURER, MODEL] Add Drop Multiplexer with firmware release of [X.X] at the network level. Before making any upgrade or change to the firmware of its Add Drop Multiplexer, Verizon must provide [Charter] with fourteen (14) days advance written notice that describes the upgrade or change to its firmware and states the date on which such firmware will be activated in Verizon's Add Drop Multiplexer.

4.2 [Charter] will, at its own cost, obtain and install (at its own premise) its own Add Drop Multiplexer. [Charter] will use a [MANUFACTURER, MODEL] Add Drop Multiplexer with firmware release of [X.X] at the network level. Before making any upgrade or change to the firmware of its Add Drop Multiplexer, [Charter] must provide Verizon with fourteen (14) days advance written notice that describes the upgrade or change to its firmware and states the date on which such firmware or software will be activated in [Charter]'s Add Drop Multiplexer.

4.3 [Charter] and Verizon will monitor all firmware upgrades and changes to observe for any failures or anomalies adversely affecting service or administration. If any upgrade or change to firmware adversely affects service or administration of FM No. [XX], the firmware will be removed from the Add Drop Multiplexer and will revert to the previous version of firmware.

4.4 The Data Communication Channel shall be disabled between the Verizon and [Charter] Add Drop Multiplexers of FM No. [XX].

See Exhibit 1, Section 4 of Exhibit A. This same language was included as Section 4 of Exhibit A of Verizon MA's final proposed amendment. *See* Exhibit 2, Section 4 of Exhibit A.

Even if Charter had not agreed with Verizon MA on these technical issues, there are sound reasons for including the distance limitations proposed by Verizon MA. These reasons are fully explained in Verizon MA's response to Charter's Issue No. 3 (*supra*, pp.14-17).

With respect to Charter's proposal to replace the term "Add/Drop Multiplexers" with "SONET Terminal," Charter has not provided sufficient information for Verizon MA to respond, because this issue was never raised during the parties' negotiations. In addition, Charter has not provided a definition of "SONET Terminal" or explained how a SONET Terminal differs from an Add/Drop Multiplexer. Without this additional information, Verizon MA is not able to respond to Charter's proposal.

For these reasons, the Department should order that Verizon MA's proposed language on technical issues be included in the parties' fiber meet amendment. *See* Exhibit 2, Section 4 of Exhibit A.

III. Much of Charter's Proposed Contract Language Does Not Relate to Any Issues Raised in Its Petition.

Verizon MA's Response: Exhibit B to Charter's arbitration petition is a draft fiber meet amendment that purports to include Charter's proposed modifications. Charter asks the Department to "find that Charter's proposed modifications to the draft agreement attached at Exhibit B are reasonable and consistent with applicable law" and to "approve its language identified in Exhibit B." Charter Petition at 14. The Department should reject Charter's request.

First, Charter's Exhibit B was never provided to Verizon MA during the negotiations, so Charter cannot submit it now. Charter's new proposed fiber meet amendment included in Exhibit B differs substantially from Charter's final proposed fiber meet amendment provided to Verizon MA during the negotiations. In fact, as explained in response to each issue, Charter's new proposed fiber meet amendment impermissibly attempts to re-open issues that were closed during the negotiations.

Second, Charter's Exhibit B contains proposed modifications that do not even relate to any of the issues listed in its petition. For example, in the final "Whereas" clause, Charter proposes a change to state that Verizon MA, rather than Charter, had requested the fiber meet amendment.⁵ *See* Charter's Petition, Exhibit B at 1. This

⁵ The parties interconnection agreement states that "the Parties may *agree* to establish a Fiber Meet arrangement" and that "[t]he establishment of any Fiber Meet arrangement is expressly conditioned upon the Parties' reaching *prior written agreement* on routing, appropriate sizing and forecasting, equipment, ordering, provisioning, maintenance, repair, testing augment, and compensation, procedures and

proposed modification does not relate to any of the issues listed in Charter's arbitration petition.

In addition, Section 2.1.4 of Charter's Exhibit B proposes intervals for the activation of a fiber meet arrangement and for the provisioning of associated facilities and trunk groups. Again, this proposed contract language does not relate to any of the issues (improperly) listed in Charter's arbitration petition.

Third, it would be entirely inappropriate to adopt any of Charter's proposed modifications that do not relate to an issue properly in arbitration. The Act authorizes the Department to arbitrate only those issues left open as a result of negotiations. Once the Department resolves the issues properly in arbitration, it has fulfilled its obligations under the Act. The Department cannot go beyond those arbitration issues to order that the parties include other contract language in their fiber meet amendment.

Finally, Verizon has filed together herewith a motion to dismiss Charter's arbitration petition. Verizon reserves the right to raise additional issues in this proceeding based on the Department's resolution of Verizon's motion.

arrangements, reasonable distance limitations, and on any other arrangements necessary to implement the Fiber Meet arrangement." Interconnection Agreement adopted by Charter on February 27, 2004, Interconnection Attachment, Sections 3.1, 3.2 (emphasis supplied).

CONCLUSION

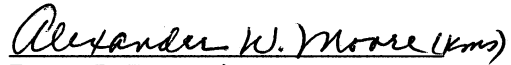
The Department should dismiss Charter's petition for arbitration because none of the issues listed in its petition were open as a result of the parties' negotiations. The parties had reached agreement on all of these issues during their negotiations and they are therefore not subject to arbitration.

If the Department proceeds with arbitration, the Department should order that the parties' fiber meet amendment include all of the language proposed by Verizon MA (Exhibit 2).

Respectfully submitted,

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